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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4743 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? 1 to 5 NO
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LATABEN R DESAI

Versus

UNDER SECRETARY

Appearance:

MR DF AMIN for Petitioner
MR HM BHAGAT for Respondent No. 1
SERVED for Respondent No. 3, 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/08/96

ORAL JUDGEMENT

The petitioner was granted quarry lease for extraction of minor minerals of Gabro (building stones) from the land comprised in Sr. No.7 situated in the boundary of village Ajapur Vanka, Taluka Palanpur, by

respondent No. 3 - competent authority and Collector, Banaskantha. The lease deed was executed on 26.7.1976. Before the expiry of the lease period, the petitioner applied for the renewal of the lease deed on 21.4.1981, which was refused by the competent authority by order dated 15.10.1982. on the ground that the area applied for falls within the forest land. A perusal of the order of the Collector shows that though in the case of the petitioner the opinion of the Forest Department was not received, analysing the opinion received in other cases, it was taken that there is a possibility of getting a negative reply from the department. The petitioner preferred an appeal against such action to the Director of Geology & Mining, but the same was also rejected by order dated 9.9.1983. The petitioner, thereafter, approached the Central Government by way of Revision, which was also rejected by order dated 18.6.1986. It is contended by the learned Advocates for the petitioner that the Collector has committed error in rejecting the petitioner's renewal application on the assumed ground that if the reply had been received from the department of Forest, the same would have been in negative. The petitioner has also given certain instances in para 7 of the petition, wherein in the same area, quarry lease has been granted or renewed.

2. Ms. Harsha Devani, learned AGP opposed this Special Civil Application. She submitted that there was no purpose of awaiting for the reply from the department of Forest in the case of the petitioner, as the Forest Department has expressed the opinion in negative in other cases. With respect to the instances given in para 7, the learned AGP invited my attention to the affidavit filed by Mr R C Mody, Assistant Geologist wherein he has stated that the quarry licence has been granted to the persons named in para 7 of the petition in the reserved forest land after the approval of the Forest Department.

3. Having considered the contention raised by the learned Advocates for the parties, I am of the view that much water has flown during the pendency of the petition before this Court for a period of more than 10 years, and therefore, it would be appropriate if the competent authority gives a fresh look to the matter and obtains a concrete view of the department of Forest.

3. In view of the aforesaid, this Special Civil Application is allowed and the order rejecting the renewal of the lease deed dated 9.9.1983 and all the other consequential orders in appeal and revision are quashed and set aside. The competent officer and

Collector, Banaskantha is directed to pass a fresh order after hearing the petitioner within a period of 3 months from the date of receipt of the writ.

Rule is made absolute to the aforesaid extent with no order as to costs.

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